

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of

Service Rules for the 746-764 and
776-794 MHz Bands, and
Revisions to Part 27 of the
Commission's Rules

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WT Docket No. 99-168

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COMMENTS OF
THE WALT DISNEY COMPANY

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Executive Summary

The Walt Disney Company commends the Commission's decision to allocate the spectrum at issue in this proceeding to broadcast, fixed, and mobile uses, and urges the Commission to ensure that the implementing rules, in fact, enable this spectrum to be used for provision of any or all of these services. This is a unique allocation that provides spectrum in which services traditionally separated in different bands may be provided either individually or in new and innovative combinations that have the potential to be of great value to consumers. Service rules and areas, channelization, and other implementing regulations must not be allowed to introduce bias in favor of, or against, any particular use of this spectrum.

The regulations governing the auction should be structured to promote two distinct goals: (a) to assure that the spectrum is awarded for its highest and best use as perceived by the marketplace; and (b) to protect incumbent broadcasters from interference. To achieve these goals, we believe that the Commission should adhere to the following principles:

- The Commission should assure that its rules do not deter or discourage bids from any class of potential licensees, including broadcasters. The rules must encourage the widest participation at the auction and should not foreclose provision of service to the public that is responsive to marketplace forces during a time of unequalled innovation and change. For those reasons, license blocks of 6 megahertz should be adopted as the basic license bandwidths. Any other bandwidth would effectively prevent broadcasters from participating in the auction and foreclose broadcasting as a potential spectrum use. At the same time, adoption of a 6 megahertz block would disadvantage no other bidder. This size block is suitable for mobile and fixed uses, as well as for broadcast uses.
- Auctioned geographic areas should be based upon designated market areas ("DMAs") or groupings of multiple contiguous DMAs, which observe county boundaries. Using DMAs would enable successful broadcast use of this spectrum without compromising the needs of other types of users.
- The technical rules must deliver on the Commission's commitments to protect all existing primary operations remaining in this spectrum until the end of the transition to digital television.
- Given the unique allocation of this spectrum and the desirability of evaluating the experience gained in this auction before setting rules for another, the Commission should explicitly state that implementing rules adopted in this proceeding will not be considered to be precedent in future rulemaking proceedings with respect to other spectrum auctions.
- Entities eligible to participate in the auction should do so on an equal footing free of regulatory bias. Rules that apply equally to all bidders and to all the services they will provide using the spectrum will foster innovations in response to market demands.

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**COMMENTS OF
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I. Introduction

The Walt Disney Company ("TWDC"), on behalf of itself and its subsidiary ABC, Inc. ("TWDC"), hereby submits comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.¹

In an earlier *Report and Order*, the Commission allocated the 746-764 and 776-794 MHz bands for broadcast, fixed, and mobile uses. In making this allocation, the Commission staked out two goals. First, by opening the spectrum for all potential uses, the Commission sought to promote the widest variety of existing and innovative new services. Second, the Commission made clear, as it was statutorily required to do, that it would develop rules to protect incumbent analog and digital full-service broadcast

¹ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Notice of Proposed Rulemaking, WT Docket No. 99-168 (FCC 99-97, rel. June 3, 1999).

stations until the end of the DTV transition period.²

The potential array of services permitted in this spectrum is uniquely broad, and TWDC supports implementing rules that will permit licensees and the public to fully realize the benefits of this spectrum. Capturing the benefits of marketplace forces to foster the provision of innovative new services will succeed only if the rules adopted in this proceeding permit, as a practical matter, all potential service providers to make effective use of the spectrum. For that reason, the rules must accommodate broadcast services, as well as fixed and mobile wireless services. Adopting such rules will further the Commission's goals of fostering new and innovative competitive services while ensuring the greatest demand for licenses at the Commission's auction.

II. Spectrum Blocks of 6 Megahertz Provide an Even Playing Field for the Full Array of Potential Users

The Commission's goal of permitting the widest array of services can be achieved only if no potential applicant or class of service is effectively foreclosed. For that reason, spectrum blocks should be sized in a manner that can be used by most, if not all, potential applicants and does not effectively preclude a particular use. Six megahertz blocks are appropriate for most potential service providers and will facilitate provision of the broadest array of services. Six megahertz blocks also are consistent with the present

² See 47 U.S.C. § 337(d)(2); *Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, Report and Order*, 12 FCC Rcd 22953 at para. 24 (1998). By this *Order* the Commission added new footnote NG159 to the Table of Frequency Allocations, 47 C.F.R. § 2.106, which states that existing analog and new digital television (DTV) broadcast operations in the 746-806 MHz band are entitled to protection from harmful interference until the end of the DTV transition period. The transition period is scheduled to end on or before December 31, 2006, unless extended by the FCC in some markets pursuant to 47 U.S.C. § 309(j)(14)(B).

channelization of these spectrum blocks, which will facilitate and simplify protecting incumbent stations from interference during the transition period.

The Commission should not directly or indirectly favor or disfavor any category of potential service provider or effectively foreclose applicants at the auction. Adopting a spectrum block inconsistent with the needs of broadcasters would have this effect by excluding an entire category of entities interested in bidding for licenses to use this spectrum. The result unquestionably would lower the bids for the spectrum and would deny a potential beneficial use. This is especially important in this auction, where applicants will be asked to bid for spectrum in 2000 or 2001,³ even though in some areas it will remain subject to protected use by full-power broadcasters until the end of 2006, or later. In determining spectrum block size, therefore, the public interest dictates that the widest range of implementations be accommodated within each of the three allocated categories – broadcast, fixed, and mobile.

Six megahertz is the defined bandwidth of both analog transmission and the digital broadcast standard.⁴ Television broadcast receivers are designed to receive only this standard through over-the-air reception. Unlike wireless services, for which equipment is available for a variety of different standards and bandwidths, broadcasters must use the FCC-adopted standard to reach existing broadcast television receivers, and this standard requires 6 megahertz channels. The digital broadcast standard is fully

³ Pursuant to 47 U.S.C. § 337, this auction must be held after January 1, 2001. However, legislation is pending that would require the Commission to complete this auction by no later than September 30, 2000. *See* S. 1122, the Department of Defense Appropriations Act, 2000.

⁴ 47 C.F.R. § 73.682.

capable of delivering a wide array of one-way non-broadcast services as well, either in addition to or in place of broadcast video programming.

Auctioning this spectrum in 6 megahertz blocks also would accommodate fixed and mobile wireless services utilizing other standards. Wireless operators may aggregate multiple spectrum blocks to obtain paired spectrum channels, use technologies not requiring paired spectrum, or pair with existing licensed spectrum in other bands to provide services requiring paired blocks.

In particular, we note that many wireless providers are planning an array of “third generation” services that include an asynchronous data capability for sending short requests in one direction that result in large data streams in the return direction. Services such as Internet web-browsing and e-mail retrieval are examples of services that are naturally asynchronous – requiring a substantially different amount of spectrum in one direction than the other. Six megahertz blocks are suitable for pairing with existing cellular, enhanced specialized mobile radio (ESMR), air-to-ground, and other services in nearby frequency bands for these and other types of services.

There are many advantages to enabling the widest array of potential service providers. The very purpose of broad allocation is to permit all potential service providers an opportunity to compete, thereby assuring that the price of the spectrum will reflect market perception of its highest and best use. Potentially this is a very valuable band because it is the only band in which broadcast services, as well as fixed and mobile services, are permitted.

Equally important, the public will benefit by the adoption of implementing rules that are sufficiently flexible to enable providers of all three types of allocated services, including broadcasters, to successfully bid for this spectrum and to use it for unique new

combinations of services that will be of value to consumers. For example, TWDC would like to have an opportunity to explore wireless hybrid broadcast / Internet combinations. But for this (and many other potential services) to be attractive from a business perspective, broadcast use must be accommodated in the competitive bidding process. For that to be accomplished, the Commission must adopt spectrum blocks based upon 6 megahertz.

III. Incumbent Broadcast Operations Must Remain Fully Protected Until the End of the Transition Period.

In reallocating and designating this spectrum for auction, the Commission unequivocally provided that existing analog and future digital operations on these channels operating pursuant to the existing allotment tables would be protected for the duration of the digital television transition period.⁵ The Commission must continue to provide full protection to these channels.

TWDC agrees with the Commission's proposed technical criteria and authority to enter into private agreements to address spectrum use coordination and interference, with one exception. Protected broadcast operation on these channels must include protection to stations' Grade B contour using maximum authorized facilities in order to ensure that stations planning to upgrade their facilities are permitted to do so. Permitting private agreements among the interested parties to protect different contours or signal levels will permit the most efficient use and ensure that a new licensee has direct contact with the protected broadcast licensee and ascertains any plans that licensee may have to increase

⁵ *Reallocation of Television Channels 60-69, the 746-806MHz Band, ET Docket No. 97-157, Report and Order, supra* note 2 at para. 17.

facilities before constructing facilities that would cause interference. Given the substantial difficulties with building facilities today, not least of which is obtaining suitable tower space, existing broadcaster protections must be maintained. Especially for the digital stations in this spectrum, which may initiate operations with less than full facilities for an initial shakedown period, protection must continue to be accorded to their signal pursuant to their license and the Table of Allotments unless and until they agree to relinquish those rights.

IV. Auctioned Geographic Areas Should be Designated Market Areas (DMAs) or Groupings of Multiple Contiguous DMAs

Designated Market Areas (“DMAs”) are geographic areas based on patterns of broadcast and cable media viewing that have been determined through household surveys conducted by Nielson Media Research.⁶ Because DMAs define television viewing markets, they constitute the foundation of commerce that supports broadcast advertising and program distribution. Advertisers ideally want to cover an entire market represented by the DMA, whether advertising in a newspaper, on cable, or through radio and television. Through experience, broadcasters have learned that for advertisers, the geographic location of persons reachable is just as important as the number of persons within range. Program distribution generally follows DMA lines because DMAs delineate market areas sought by advertisers. Any medium that serves only a portion of

⁶ See *Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, CS Docket No. 95-178, Report and Order, 11 FCC Rcd 6201 (1996) for a description of DMAs.

such markets is disadvantaged because advertisers seek to reach the entire DMA.⁷ Consequently, providing broadcast or other advertiser-supported service in an area congruent with DMA boundaries will benefit such services, and conversely, attempting to provide such services in an area straddling traditional program distribution areas will have an adverse impact.

DMAs respect county boundaries in the same manner as other geographic areas that have been used by the Commission for auction purposes, such as Basic Trading Areas, Major Trading Areas, and Economic Areas. TWDC believes that alignment of geographic service areas along DMA boundaries for provision of spectrum-based services would benefit a wide array of potential service providers. Adopting DMAs as the service areas for auctioning this spectrum would benefit providers of non-broadcast services as well as broadcast services because DMAs define areas within which consumers naturally shop and acquire services, and non-broadcast services may evolve to become advertiser-supported services. Any advertiser-supported type of service, or service that uses advertising to solicit customers, will benefit from the Commission's using DMAs as basic service area building blocks because DMAs follow natural lines of commerce.

If wireless providers require service areas larger than DMAs, contiguous DMAs could be aggregated to accommodate their needs. Multiple contiguous DMAs also could

⁷ See *Petition for Inquiry Into the Need for Adequate Television Service for the State of New Jersey, First Report and Order*, 58 FCC 2d 790 at para. 23 (1976), in which the Commission rejected a proposal to reallocate a television channel from New York City to Trenton-Freehold, New Jersey because, *inter alia*, economically it would be a marginal operation due to its partial but not complete coverage of both New York City and Philadelphia. The Commission found that such coverage limits advertising reach, whether carried by the licensee, or procured by the licensee to promote its own services.

be used in areas where individual DMAs are so closely spaced, such as in some portions of the Northeast area of the country, that limiting a signal to the single DMA would be inefficient or otherwise technically difficult.

V. FCC Rules in this Proceeding Should Not Serve as Precedent in Future Proceedings

Given the unique allocation of this spectrum, the Commission should explicitly state that the rules governing its auction and use will not be considered to be precedential for purposes of future proceedings. In so doing, the Commission would be recognizing that the experience gained in this first mixed-use auction may well indicate the need for rules changes for future auctions. Such regulatory flexibility will foster interest and participation in future auctions. Freed of precedential consequence, the Commission will have the flexibility needed to shape rules for this auction that will accommodate a full array of new services, many of which may have elements of two or even all three of the authorized types of services, as well as existing services. Unique rules are appropriate here, in the context of this broad allocation, where service providers traditionally subject to different regulatory requirements for the first time will be bidding against each other for the same spectrum.

VI. Fair Regulatory Treatment

As a general principle, all eligible participants in the auction should participate on equal footing. To achieve that end, the Commission should refrain from imposing traditional regulatory requirements that would have the effect of disadvantaging one potential class of participants. Adopting rules that treat all bidders similarly would foster innovations in response to marketplace demands instead of regulatory requirements.

With convergence, it is likely that a number of services will not be classified easily as a broadcasting service or a fixed service. For the highest auction price to be realized, and for the public to benefit from the widest array of services, all potential bidders should be similarly unencumbered by regulatory restraints unique to themselves. All licensees should be similarly free to experiment with various types of innovative new services.

This proceeding provides an opportunity for service providers to respond to market demands free from traditional regulatory burdens. The Commission correctly has allocated the spectrum to a number of traditionally distinct services, and now should seize this opportunity to adopt rules that carry through and foster provision of the services most desired, whether they be broadcast, mobile, fixed, or innovative mixes of these services.

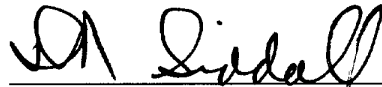
VII. Conclusion

The Commission should deliver on the promise of its broad allocation by adopting implementation rules that provide a level playing field for all classes of participants in the auction and permit the broadest possible array of services to the public. No entity – including broadcasters – should be foreclosed by rules that effectively rule out a potential use of the spectrum. Likewise, incumbent broadcast use of the spectrum should be protected.

The Commission's goal of promoting development of innovative new services that serve consumer interests can be accomplished by adopting rules that license the spectrum in blocks of 6 megahertz in service areas consisting of DMAs or multiple contiguous DMAs. Such rules must continue to fully protect all incumbent broadcasters during the DTV transition. The unique allocation of this spectrum suggests that these

goals also would be furthered by explicitly not considering the rules adopted in this proceeding to be precedent in any other proceeding.

Respectfully submitted,



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